EVOLVING A RIGHT LEGAL FRAMEWORK FOR WITNESS PROTECTION TOWARDS RENDERING COMPLETE JUSTICE IN CRIMINAL TRIALS IN INDIA: A CRITICAL LEGAL STUDY WITH SPECIAL REFERENCE TO DELHI-NCR

SHORT SYNOPSIS

Submitted in partial fulfillment of the requirement of the degree of

DOCTOR OF PHILOSOPHY

by

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ABSTRACT

Witness Protection is a fundamental prospect which needs to be legally handled through Judicial Integrity and thus it holds a very significant position for the perseverance of justice. There are various schemes which have emerged in order to deal with the safeguarding of witnesses who have very critical information regarding the matter in issue and can face any kind of situations like intimidations, injury or coercion and thus there arises an emerging requirement in order to enforce the critical procedures in the Judicial Systems. This research is critically based on the in-depth study of the requirement of safeguarding the witnesses and to scrutinize the requirement of enhancing the efficacy of the Judicial Processes. Witness Safety is something which is of the utmost requirement for rescuing the accuracy of witness testimonies otherwise witnesses may not offer testimony with the agitation of being requital which will ultimately hamper the justice system. Witnesses many a times have to come across many challenges regarding their safety including coercion, intimidation, any kind of assault such as physical harm, etc, in cases where the matter in issue revolves around terrorism or high-profile matters and thus it is considered as the persistent need for the implementation of profound safeguarding measures for safeguarding the witnesses and also for reinforcing a strong justice system for the court to prevent any influence or manipulation from hindering the justice in order to strengthen public trust and gain confidence in the legal system. This research aims to study all these above-mentioned aspects and to arrive at a conclusion which can help the authorities build up the trust of witnesses in courts and help them recognize the impartiality and fairness of the court in administering justice. There is this assertion regarding the protection of witnesses in the legal sphere which cannot be disregarded and thus many schemes have been introduced in order to safeguard the witnesses which will allow them to wilfully give testimony in the court having no fear of intimidation or injury while also preserving the trust and the integrity of the court proceedings and to demoralize the means and actions regarding the tampering of the witness which will itself enhance the faith of the society in the judiciary system.

Keywords: Witnesses, Justice System, Reliable Evidence, Judiciary, Witness Protection

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1. INTRODUCTION

Witnesses are the most essential role players in the justice system. While having witness's testimony, it becomes quite feasible for the legal authorities to come to a conclusion and deliver a judgment on the matter in question. The importance of witnesses is because of the role they have in any judicial proceeding as the Judges are the advisory bodies and the justice providers and in order to provide justice they need the best evidence for the better understanding of the matter in issue and the entire responsibility is upon the court for recording relevant information. Every witness and victim of the matter in issue should have a fair opportunity to provide testimony in court. There are circumstances wherein witnesses straightaway deny from testifying where the reason is the inducement they receive from the defending party. It is evident if we look through the intricacy which has been pursued since recent times, there are countless high-profile matters where the witnesses are to turn themselves hostile which results in getting many accused individuals acquitted and this is the biggest reason why eyewitnesses are vanishing as per the inducement they receive from the opposite party and this has somehow been just because of the deficiency in the Indian legal framework. There arises a crucial requirement of a structured and systematic “criminal justice system” or otherwise any initiative taken by the legal authorities or any government authority with respect to creating an autonomous society will be considered as futile. The Hon'ble Supreme Court with respect to the issue of witness protection, stated, "Time has come when serious and undiluted thoughts are to be bestowed for protecting witnesses so that the full extent of the evidence is presented before the court, justice is victorious, and the trial is not reduced to mockery." As per the views of the court, the unwillingness of the witness to provide testimony against people with physical power, money power, or political influence has emerged as the norm.

1.1 Witness Protection: Meaning and Competency

There can be no static definition of “Witness” as its precise meaning keeps on changing totally depending on the legal framework. It is always kept in mind that the state of mind of the witness of a matter in issue is not hindered more importantly than the status or kind of statement he is about to make as he carries critical information for the criminal proceedings and thus, the examiners or the sitting judge can’t be compelled to proclaim an individual with

the tag that he is a witness in the initial stage itself. Whereas, if we talk about Competency, it refers to legal qualification of an individual to be a witness of the matter in issue in the court proceedings and thus a witness must fulfill all the legal requirements whether specific or not, for being competent.

Competency can be called to doubt in case the witness deals with a mental handicap or lacks the ability to speak the truth or if the witness has some personal reasons and thus, if the witness is considered incompetent by any ways or due to any reason, then their evidence will be declared inadmissible as the individual testifying as a witness is considered as in essential and most needful initiator of data and reasons with respect to the events related to a case and the competence of the witness is always considered keeping in mind their capability to provide credible, trustworthy and most accurate testimony relying on their observations and knowledge.

Witnesses are considered as a messenger of truth and it is their responsibility for the delivery of justice in the court and are required to elaborate the events they witnessed while also discussing their experience and give their expert view which might somewhat help in establishing the facts and explain the critical details to a matter in issue. The impact of the testimony of a witness is thus considered as great as it influences decisions and results of the case which might help in advancing the cause of justice.

Whereas, Competency adverts to the capacity and dependability of a witness to give testimony in the court successfully. Competent witnesses are considered as the most appropriate individuals who value the veracity of the case and the relevance of their evidence thus they must have the mental capacity to priorly keep in mind the future consequences of what they are testifying whether it be the occurrence of the matter, the pertinent facts that they need to recall, or to explain their observations. Also, along with the mental ability of a witness, his age, perception and memory also influences his proficiency and the court considers these elements typically and seriously before granting evidence. Competency arrives with cross-examination as it is considered as the capacity of an individual to testify with regard to the veracity or coherence which may be questioned. Moreover, there may be certain rules and norms that are needed to be obeyed by the witnesses before they testify or

confirm the claims are credible, have relevance and are unbiased. Witnesses are cross-examined in order to determine the veracity of their own claims.

1.2 Classification and Importance of Witnesses

Witnesses are undoubtedly an essential component of Indian Judicial Proceedings. Witnesses are the insight providers in events that are pertinent to the case for assisting the court to reach a fair verdict and are thus classified into various forms and characteristics which includes witnesses as per their relevance, participation and also trustworthiness with respect to judicial proceedings and thus there is a critical need to understand the categorization and importance of witnesses in order to attain fair trials and to preserve the norms of justice.

1.2.1. Classification of Witness

Hostile Witnesses: There are witnesses who become hostile, that is they testify in a detrimental manner to the party which calls witnesses or they just deny to comply with the procedures of the court which causes serious issues and hampers judicial proceedings and despite of all this, the confessions given by them still undergoes investigation and are also cross examined.

Expert Witnesses: The witnesses who express knowledge which is considered way beyond specific and the proficiency that they can offer to ascertain the facts of a matter in issue. Expert witnesses are the professionals in their respective fields such as engineers, the medical professionals, the forensic experts and other specialists who have pertinent knowledge of the matter in question and are qualified to act as expert witnesses.

Eye Witnesses: Eye Witnesses are the witnesses who witnessed something or the occurrence of an event or the circumstances which surround the matter in issue. Such witnesses are the ones who are considered very significant in terms of the direct knowledge they have regarding the facts which surround the case. They are the direct and substantial factor on the results of trials in a case.

Character Witnesses: Character witnesses are the kind of witnesses who testify on the behavior, reputation or the character of an individual who is directly or indirectly engaged in the case. The evidence provided by character witnesses stands as a proof in terms of the

moral and ethical standing of an individual, which is somehow considered as very useful in all sorts of proceedings requiring such witnesses such as the proceedings which involve matters of character assassination or defamation.

Hearsay Witnesses: The ones who have directly or indirectly obtained certain information through the procedure of communicating knowledge. The evidence acquired from the Hearsay witnesses are often considered as less credible and thus, are sometimes excluded from the court proceedings but certainly hearsay rule does have many exceptions with regards to specific situations.

1.2.2. Importance of Witnesses

Witnesses are the most essential component with respect to the determination of the facts and circumstances of a case. Witnesses are the ones who provide recollections of the whole event, the conditions that occurred and all the acts related to legal procedures. Witnesses are the backbone of any case that occurs in the court, thus it is almost impossible to determine the facts and arrive at a decision in the absence of witnesses. Witnesses not only provide evidence to the court but also give validations in terms of testimonies with respect to many types of evidence that are produced in the court, likely forensic reports, papers and any physical form of evidence and such validations given by witnesses through their testimony, increases the credibility of the proofs and evidences while also enhancing the case of the concerned parties and also the evidences assist the courts in understanding the events as per the sequence and also provides specific reasons for actions. Witnesses are the frequent participants in context with the events of a legal case. There is no doubt that witnesses are also cross-examined in order to understand and come to a conclusion with respect to the credibility and the dependability of their evidence. Cross-examination is a process which tends to expose the contradictory statements, the biases and the inconsistencies of the testimonials of the witnesses which in return allows the court to come to a decision by judging the weight of the evidence given by the witnesses while also improving the transparency and neutrality of court procedures.

Importance of Witness can be well understood in the case, **State of Rajasthan v. Abdul Mannan (1972)** which clearly mentions the crucial role of witnesses through its ruling in

which the Supreme Court mentioned in its ruling about the significance of the testimony of an eyewitness in order to come to a conclusion with regard to the guilt of the party in question beyond reasonable doubt. The hon'ble Supreme Court in its ruling mentioned that testimony of eyewitness if reliable can be considered as a notable evidence in order to determine a criminal case where the whole scenario completely depends on the reports of the witnesses in order to stand in support of the accusations against the party in defense.

Another significant case which emphasizes the importance of the witnesses is **Rameshwar Singh v. State of Jammu & Kashmir (1970)**, in which the Hon'ble Supreme Court has signified the essential requirement and role of the testimony of eyewitnesses and has clearly indicated its concerns against the repudiation of evidence, while also highlighting that in case there occurs some sort of contradictions in the evidences of witnesses then also still the scenarios described by the witnesses will be taken into consideration at the time of demonstrating the accused guilty of the offense committed or acquitting him.

To describe the consideration of direct and indirect evidence exhibited by the eyewitnesses, the case that emerged with regard to the aforementioned facts is **Pulukuri Kottaya v. Emperor (1947)**, in which the court highlighted that the credibility of the direct evidence such as testimony of eyewitnesses is way more persuasive than the indirect evidence such as circumstantial evidence which completely rely on speculation.

Eventually, Witnesses are the crucial role players in the Indian Judicial System who offer the court their critical testimony and provide evidence in order to ensure fair trial and justice with respect to the judgment. The classification of witnesses completely depends on their importance in the legal procedures which completely emphasizes the contributions made for the conflict settlement and the administration of justice.

1.3. Holistic approach needed to Witness Protection in India

Witnesses are the most important role doers of guaranteeing justice and are still left exposed to harassment, intimidation, assault while also scaring them and making them hesitant from testifying honestly and creating even worse conditions to restrain them from coming forward at all which constitutes a significant hurdle with respect to fair trial. To protect and preserve the integrity of witnesses and promote their support in criminal trials, there is this rushed

necessity for “witness protection laws” which would allow witnesses to avail appropriate precautions such as their confidentiality, financial support to them, switching their locations and to safeguard them against retribution. Witnesses have always been an important aspect of the “criminal justice system” in regards to their vital testimonies but still prevails a fear of revenge and vengeance which somehow prevents the witnesses from taking a step forward and appearing for testimony, which results in miscarriage of justice. If there arrives a strong statute with respect to the witness protection, then it may tempt the witnesses to testify without any fear of vengeance which would then amount to impartiality and would make the trials efficient. The cases that are high profile and very sensitive in nature, are mostly subject to harassment and intimidation and there are chances that witnesses might get compelled to temper their evidence and modify them, which would change the case entirely and would jeopardize the legal process and the legitimacy of the case. Taking into account the “Indian Criminal Justice System”, it has various flaws with respect to corruption, it is inefficient and also causes disruptions and they have to deal with these challenges which leads to extension of trials, guilty party is often acquitted which leads to a loss of public trust which in itself is a major defeat of the Indian justice system.

Witness protection is a major concern which in itself is procedural and is considered as a basic human right concern. No matter what the position of a person is in the court, that person has a right to be safe from assault and from being manipulated. It is a bound duty of India to safeguard the access to justice and the rights of witnesses as being a member of UN while also being signatory to various international treaties and thus if there arrives a robust law with respect to the protection of witnesses, Indian legal structure will fall back on track with respect to all the international commitments while also boosting a position as an accountable member of the Global community.

2. LITERATURE REVIEW

2.1. Books referred:

- In the book of Chris Mahony, titled as **“The Justice Sector Afterthought: Witness Protection in Africa**”, the author focuses on safeguarding witnesses in countries such

as South Africa, Kenya, Uganda, and Sierra Leone. It emphasizes the utmost importance of security for witnesses during instances of criminal activity. The book also pertains to witness safeguarding in the ICC, the ICTR, and the Special Court for Sierra Leone (SCSL). Additionally, the writer stresses that, in addition to physical protection, safeguarding witness testimony includes psychological wellness of the witnesses in sensitive investigative, prosecutorial, and judicial practices, which includes displacement and identity changes.

- In the book of Ranchoddas & Dhirajlal, titled **"The law of Evidence"**, the researchers have referred to "Sections 151 and 152 of the Indian Evidence Act 1872", which mentions the safeguarding of the witnesses from being asked offensive, scandalous, indecent questions and such questions which may insult or annoy the witnesses.

2.2. Articles Referred:

- In the Consultation Paper namely "**The Law Commission of India, Consultation Paper on Witness Identity Protection and Witness Protection Programme, August 2004**", it stressed on the crucial importance of a comprehensive Witness Safeguarding Law. The paper also looks upon and examines the special statutes of law, the SC's views and the prior findings of the "Law Commission of India" on the matter of witness safety. The paper has also prioritized witness identity preservation over physical safety.
- In the paper of Goklesh Meena titled as "**Need for a Witness Protection Law in India - The Solution to the Problem of Hostile Witnesses**", the emphasis is about the crucial role of witness in our court system. The author recommends implementing a "Witness Protection Programme". The author also scrutinizes hostile witnesses' intentions, but fails to mention the after effects.
- In the book of Dhruv Desai "**Treatment and Protection of Witnesses in India - A View at the Existing Legal Position as Regards Witnesses**", the author demonstrates how nowadays the court is taking the witness evidence casually. The author anticipates that witness safeguarding programmes and the legislation are badly needed. The author mentions that the insufficiency of legislation that

guarantees security for witnesses has benefited them in strengthening their stances. The author provided instances of scenarios in which specific laws safeguard witnesses, and has evaluated relevant legal laws. He also outlined the factors the Delhi HC evaluated when considering whether to award Witness Protection. But the author has failed to consider the global context of witness protection.

- In the research of Suman K. Jha, titled as "**Murder of Justice**", the author has demonstrated how powerful people are leveraging the judicial system. She has also listed several prominent instances, including the Priyadarshini-Matoo case, the Nitish-Katara case, Jessica-Lal murder case, and the Salman Khan hit-and-run case in her research. The author has also contended that a brief inspection of the latest prominent instances in the past is indicating a revolting tendency of the "hostile witnesses". The instances are reviewed, but the law's role in preventing the witnesses from becoming hostile is not at all addressed.
- The research paper of Madan Lokur, titled "**Access to Justice - Witness Protection and Judicial Administration**", has been composed with a deep comprehension of the matter in question. A specific attention has been drawn to the vitality and specifically to the necessity for a robust safeguarding of Witnesses Programme in India. The recommendations given by the "Law Commission of India" regarding the matter for safeguarding of witnesses are also examined. The author also provides an international perspective on the matter. The paper is highly useful, yet the author lacks to primarily address the reasons why a witness becomes hostile.
- The author V.N. Khare in "**Amend the Judicial System**", reinforces the vital importance of a witness safeguarding Programme in reducing the threat of hostile witnesses. According to the author, witnesses in America are protected for their whole lives. India must also develop a comparable approach in order to adequately address the situation of witnesses turning hostile.
- The author Goklesh Meena in his study **"Need for a Witness Protection Law in India – The Solution to the Problem of Hostile Witnesses"**, interprets the function of the witnesses in the criminal courts. The author also proposes that India must establish a Witness Safeguarding Programme since it is unwilling to allow the country's "criminal justice system" to collapse. He analyses many reasons why

witnesses become hostile, but he skips over investigating the repercussions of witness hostility.

- The author Sairam S. Kumar in his paper titled as **“The Menace of Hostile Witnesses in Criminal Trials in India - A Closer Look”**, pulled off a thorough investigation of the causes of witness hostility and offers some strategies to avoid witnesses from becoming hostile. He advocates amending "Sections 161 and 162 of the Code of Criminal Procedure 1973" to improve their accountability. It stipulates those statements that are made by police under "Section 161 of the CrPc 1973" must be specifically authenticated by the witnesses to ensure that they are implemented at the time of trial in order to corroborate or disprove their testimony. The present legislation, "Section 162 of the Code of Criminal Procedure, 1973", stipulates that those statements given under the Section 161 need not to sign such statements. The author underlines that a revision to "The Code of Criminal Procedure 1973" would to some magnitude, place ethical constraints on the witness to refrain the witness from altering his conduct in court later. The author additionally advises simplifying the investigative procedure and also the Police officers must undergo specialized training in order to conduct criminal investigations.
- In the succinct monograph “**Urgent Need for Witness Protection**", the writer K.P. Singh, has inscribed sympathy with respect to the witnesses who have been harassed whether it be in manner, also the writer specifically highlights the utmost concern with regards to witness protection in India. It has been experienced by K.P. Singh, it is apprehensive for the eyewitness to cooperate with the authorities that are investigating as the witness will have to deal with substantial delays while also dealing with harassment in the court. The author recommends various solutions with respect to witness protection in India while encouraging the compilation of a list of terrible acts in order to implement the witness protection scheme.

3. OBJECTIVES OF RESEARCH

The Objectives are as follows:

- To perform a comparative examination of witness safeguarding legislation across nations and internationally.
- To emphasize the magnitude of witnesses in the court system and to impart awareness into their contemporary situation by highlighting the challenges they experience, as well as to emphasize the necessity for witness protection in India.
- To analyze and critically assess India's legislative procedure for witness protection.
- To examine current judicial answers from Indian courts to better understand the issue of witness protection and its importance.
- To provide realistic solutions for ensuring a secure and safe atmosphere where witnesses can speak freely without fear of repercussions.

4. RESEARCH METHODOLOGY

This study has been designed in order to rely on both doctrinal and non-doctrinal research. The research which will be imparted through the doctrinal method will consist entirely of displaying and analyzing legal principles in order to be used in research methodologies with respect to the current scenarios. The respective research will further delve into the examination of already existing and actual legal issues with respect to witness protection. The data will be fetched through various sources, likely reference books, textbooks, reports, case laws, case studies, journals. In order to study the legal framework with respect to witnesses including their compellability, their privileges, their need for protection and also their competency, the researcher will have to delve into the descriptive approach of research. Further, an explanatory method will be conducted in order to determine the factual reasons behind the vulnerability of witness and the influence it lays on the justice system.

5. HYPOTHESIS

The hypothesis of the research are as follows:

1. The present witness protection mechanism in India is inappropriate to protect witnesses, contributing to inadequate safety precautions and a lack of credibility among witnesses to testify in criminal trials.
2. The disbursement of financial and personnel resources for safeguarding witnesses in India is inadequate, resulting in a detrimental influence on the accomplishment of these initiatives.
3. Witness protection programmes have been implemented haphazardly across India's states, triggering a spectrum of success in safeguarding witnesses from attacks and damage.

6. RESEARCH QUESTIONS

1. What ethical concerns are involved in providing witness protection, notably the balance of equity, protection and individual liberties?
2. What factors include financial expenses of establishing and sustaining witness safeguarding programmes, and how do they differ among judicial systems?
3. How do cultural and societal variables impact the use and perception of witness protection in legal contexts?
4. What ideas and best practices can be gleaned from successful witness protection programmes across the world, and how can they be used to improve current frameworks?

7. EXPECTED OUTCOMES OF THE RESEARCH

The utmost need for witness protection within the legal spectrum is critical for various reasons, and the consequences are multifaceted:

- Safeguarding Witness Safety**:** Witness protection programmes seek to protect persons who offer critical testimony in judicial trials, particularly those that involve organized

crime, terrorism, or high-profile criminal activity. The primary goal is to safeguard witnesses from retribution or damage by defendants or their connections.

- Preserving Justice: Protection for witnesses serves to preserve the integrity of the court system by allowing witnesses to speak out without fear of penalties. This guarantees that justice is administered properly and that cases are not jeopardized owing to witness intimidation or tampering.
- Encouraging Cooperation: Providing witness protection encourages witnesses to cooperate with law police and prosecutors. This cooperation is critical for obtaining evidence, establishing solid cases, and successfully prosecuting offenders.
- Disrupting Criminal Networks: Witness Safeguarding Programme can undermine criminal networks by incentivizing people to testify against their associates. This can result in the destruction of criminal organizations and the prevention of future criminal activity.
- Enhancing Public Safety: Safeguarding witnesses not exclusively benefits the individuals who are involved, but it also improves public safety by eliminating dangerous offenders from the streets and averting future crimes.
- Building Trust in the judicial System: When witnesses feel protected and supported, they are more likely to trust the judicial system. People are more inclined to come forward and report crimes when they think they will be protected and handled properly by law enforcement.
- Preventing Witness Tampering: Witness protection methods help to avoid witness tampering, which is a serious threat to the integrity of court proceedings. These initiatives reduce the threat of outside influence or pressure indemnifying witnesses with a safe environment.

8. TENTATIVE CHAPTERIZATION

Chapter 1: Introduction

The Introduction chapter will establish the context by offering a brief description of safeguarding witnesses in the legal field. It will explore the vital need of safeguarding witnesses, the difficulties they experience, and the utmost need of resolving these concerns within the justice system.

Chapter 2: Major issues in protection of witnesses in "criminal justice system"

This chapter will specifically address the problems encountered by hostile witnesses, incorporating as intimidation, compulsion, and fear of vengeance. It will employ case studies and real-life examples to demonstrate the negative impact of witness intimidation on the justice system.

Chapter 3: Role of the State in the Protection of Witnesses in India

This chapter will probe into the legal and judicial mechanisms used to handle witness protection problems in India. It will also investigate applicable legislation, court judgements, and legal precedents designed to protect witnesses and ensure their participation in judicial procedures.

Chapter 4: Witness Protection Laws: A Comparative Study

This chapter will be providing a comparative examination of witness protection regulations across several countries. It will emphasize on and evaluate specifically the differences in legislative frameworks, implementation tactics, and outcomes, shedding light on best practices and opportunities for improvement.

Chapter 5: Empirical Analysis of Witness protection laws in Delhi/NCR region

This chapter will be providing a comparative examination of witness protection regulations across Delhi/ncr. This analysis will specifically highlight the differences in implementation tactics, and outcomes, shedding light on best practices and opportunities for improvement.

Chapter 6: Conclusion and Suggestions

The concluding chapter will summarize major results and makes recommendations for increasing witness protection in the legal sector. It will expose gaps in current systems, make legislative recommendations, and emphasize the need of prioritizing witness protection in order to maintain the integrity of the judicial system.

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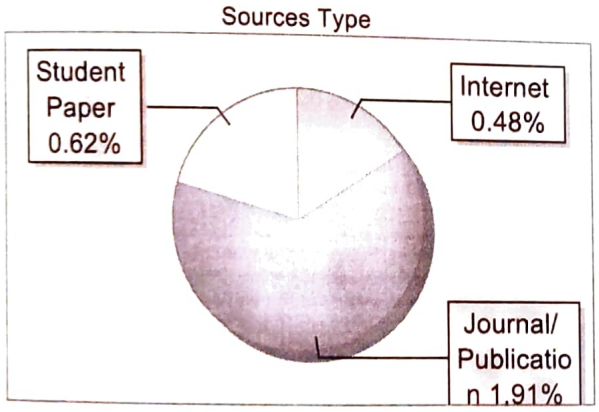

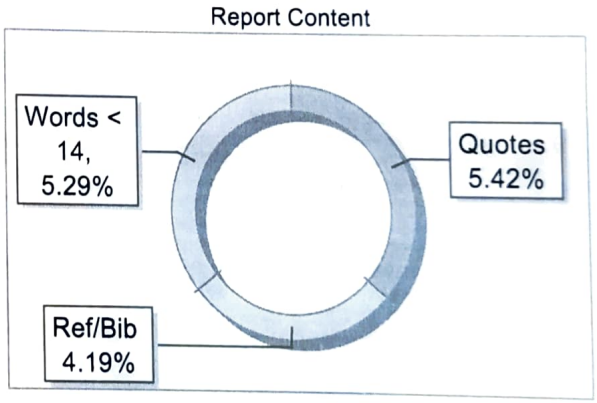

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Swami Vivekananda Library and Resource Centre
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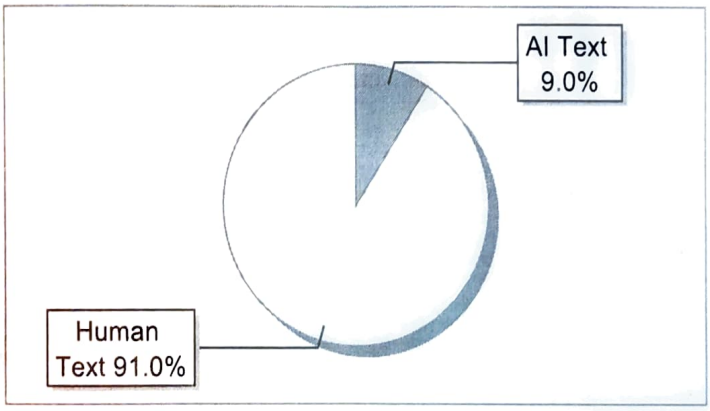

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